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Historical Genealogy of Japan's Judicial Reform: Its Achievements and Challenges

By SHUNSUKE MARUSHIMA *

I. Japan's Judicial Situation in the 1970s and 1980s

I became a lawyer in 1978, and this year I will celebrate my 35th anniversary of entry into the legal profession. From the 1980s to the 1990s, I worked at the Center for the Criminal Defense and the Institute for the Promotion of Judicial Reforms at the Japanese Federation of Bar Associations (JFBA). From 1999 to 2001, I was delegated by the JFBA to work for the Secretariat of the Justice System Reform Council (JSRC, hereinafter the Reform Council) of the Japanese Cabinet and was able to witness the energetic reform debates that were going on at the time. I also worked for a public law firm managed by the Tokyo Bar Association until 2008. I then became the Secretary-General of the JFBA and helped implement the *Saiban-in* system. Presently, I serve as a member of the Judicial Training System Review Committee of the Japanese government and try to solve various issues and problems related to Japan's legal education system and training programs. Thus, for the last 20 years, I was heavily involved at each and every stage of the country's road to judicial reform, and my talk today will reflect on some of those experiences and give you an overview of the historical process through which Japan's legal reform came about, and the present challenges it now faces.

Japan's judicial reform movement began apace in the 1990s, but

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the necessary preconditions for its rapid development were in place much earlier from the 1970s to 1980s.

During the 1970s, Japan witnessed an era of unprecedented economic growth and expansion, but as a result, came face-to-face with a welter of new social issues, such as environmental pollution, labor unrest, and inner city problems, from which arose many outstanding human rights concerns. Seeking to address these emerging problems, the judiciary at the time began to take on a much more proactive role in handing down progressive court rulings.

These decisions by activist judges drew a slew of fierce criticism from the ruling party at the time, but the Supreme Court, rather than being complaisant to political pressure, responded with refusals for reappointment of certain judges and denying some legal apprentices from sitting on judgeships. This was a time of political and legal crisis; the Court's apparent reaction seemed to indicate that the independence of the judiciary had been severely compromised.

Hence, these unique circumstances led to a decade of legal stagnation and obstruction from the '70s up until the late '80s. The growing number of problems within Japan's legal institution were apparent, and systematic changes became necessary. Some of these problems include the growing rigidity of court organization; growing tendency in standardizing adjudicative processes and litigation; the court's inclination to follow administrative decisions and rulings; a lack of citizen participation in criminal or civil litigation, either by jury or mixed court; inequitable legal arrangements in administrative litigation practices for citizens; questionable methods of extraction and use of confession records; an ineffective civil legal aid system; and an inequitable system of legal training, whereby tremendous personal and financial burdens were imposed on applicants themselves. Additionally, while the judiciary in Japan has generally avoided unnecessary friction with the other political sectors of the government, it is difficult to assert that it had performed admirably in checking the political power of the legislative or executive branches or even assuring the protection of human rights as demanded by the Constitution.

II. Strategies of Judicial Reform and the Justice System Reform Council: The 1990s and 2000s

A. The Movement of Bar Associations and Legal Professionals for Judicial Reform

Beginning in 1990, not only were the lawyers and bar associations mounting harsh criticisms against the ongoing inequitable and inefficient judicial situation, but the grievances of the general public over these inefficiencies began to coalesce into something of a concrete social movement that led to an intense national debate on possible fundamental changes to Japan's entire legal apparatus to resolve this decade-long impasse.

This was also a time when globalization and rapidly changing social arrangements deeply exposed the existing inequities within Japan's existing system of traditional politics, highlighting the need to further expand the role of the judiciary and strengthen judicial functions and decision-making powers of both the courts and the legal profession as a whole.

The first of such changes to receive national attention was the creation of the free attorney-on-duty (*Toban Bengoshi*) service for detained criminal suspects, and a similar campaign to establish the national public defender system. Running concurrently with these two programs was a general effort to expand access to the justice system and formulate better strategies for providing legal services in low population areas. Many lawyers and a number of bar associations also began to focus on enacting more civic legal aid and human rights reform in an effort to serve a legally disenfranchised population.

Additionally, the nationwide movement to support mock jury trials and court-monitoring was also developing, which paved the way for the realization of citizen participation in the judicial process. And lastly, the appointment of judges from a preexisting pool of practicing attorneys was another hot-button issue at the time these other ideas for reform were being discussed.

In light of these various reform agendas – many of which were supported by the broader public – the JFBA decided to offer a set of official proposals and recommendations under two reports, “Judicial Reform Visions: Towards a Trusted Judiciary to the Citizen” and “Basic Proposals Toward the Realization of Judicial Reforms.”

Placing "civil justice" as the center piece of these reform efforts, it effectively promoted the introduction of the unification system of legal professions (*hosoichigen*), citizen participation in the justice system, the expansion of legal counseling centers and the establishment of state-funded public law firms, a much more effective advocacy system for criminal suspects and victims, fundamental reforms in the civic legal aid system, a significant increase in the judiciary budget, and more generally, an overall expansion of the judicial infrastructure.

Debates on various judicial reforms by different interest groups and unified agreements on common directions overriding differences in their respective positions and background in times like this led to even greater discussions regarding the necessity to expand the limited capacity and role played by the legal profession and the judiciary.

B. The Justice System Reform Council

Amidst the ongoing national debates on judicial reform that were happening within the different circles of the legal community, a law to create the Justice System Reform Council (JSRC) was finally passed in June 1999. The JSRC was established within the Cabinet Office and during the committee selection process came an emphasis for a need to call for active participation of the so called "users" of the legal system – rather than simply legal professionals – who were then expected to be fully prepared to articulate their agendas and concerns at the meeting.

The press was given open access to council meetings and discussions so that the debates of the council could be shared with the public through live reporting – and a large volume of public opinions were heard during these meetings.

One of the more common of such responses was the call for a more active realization of citizen participation in the judicial process – for citizens' voices to be heard in legal decision-making. This particular sentiment strongly influenced the final deliberations of the council.

It was from these meetings that the Reform Council decided to conduct an investigation of lay participation systems in four countries – Germany, France, Great Britain, and the United States – in order to further assess the possibility of implementing Japan's own system of lay participation. The council members actually

witnessed firsthand judicial training procedure and judicial decision-making by the citizens in these countries.

However, some council members still had discrepant ideas about what the nature of "reform" meant and how the current judiciary was to be critically assessed to implement plausible plans for change. Nevertheless, some members who had positive evaluations of the Japanese judicial systems also suggested some additional changes, such as the introduction of a unified system of legal profession, the establishment of a jury system, an overall increase in the number of legal professionals, and the introduction of a law school system. Other members warned that the simple adoption of these American-style justice systems and programs was not suitable for Japan.

The debates in the Reform Council had undergone a dramatic transformation from second year's summer, especially with heated discussions over the possible unification of the legal profession, the extent and form of judicial participation by citizens, specific reforms of the judge system, and the most optimal increase in number of legal professionals.

Since the content of judicial reform discussions began to attract the national attention of citizens, council discussions of citizen participation in trials began to proceed all at once. Agendas that were previously met with great resistance from some of the members began to make significant strides; these included such plans to reform the judge system, and the expansion of the civil legal aid and national public defender systems. The Reform Council also agreed to create a mechanism to strengthen the checking and monitoring of the judiciary against other branches of the government. As a result, the Council's final proposals far exceeded the initial expectations in volume and scope.

III. Achievements and Challenges of Japan's Judicial Reform

A. Civil Society, the Justice System, and Lawyers

1. Access to the Justice System

The council's final recommendations for reform helped to promulgate a number of new measures that were to significantly revamp Japan's legal landscape; for instance, the Comprehensive Legal Support Act (*Sogo Horitu Shienho*) and the Japan Legal Support Center (JLSR or *Ho Terasu*, hereinafter the Legal Support Center)

both reaffirmed the government's commitment to people's access to the justice system.

The Legal Support Center provides information on civil legal aids, public criminal defense, crime victim assistance, and strategic suggestions for the equitable deployment of legal services in low population regions. It also engages in voluntary projects commissioned by the JFBA. The government's budget for the Center has since then reached more than 30 billion yen (i.e., \$370 million); the sheer volume of its activities is indicative of its important role in establishing a more equitable legal system.

In 2000, the civil legal aid program received more than 35,000 legal consultation cases and 20,000 of them were represented by attorneys. Last year, in 2011, the Legal Support Center received 280,000 legal consultations and the number of assisted cases reached 100,000 cases – signifying a significant proliferation of legal advice-giving and consultation.

These activities have been supported by approximately 20,000 lawyers in private practice, in addition to more than 200 full time lawyers hired as staff attorneys. Staff attorneys are strategically placed in urban and rural areas and have been responsible for providing assistance in all kinds of legal and administrative cases, including in victim advocacy and social welfare and medical cases in remote areas; these were done in an effort to serve the socially disadvantaged who otherwise have no access to legal services. For non-judicial, administrative legal matters that fall outside the purview of civil legal aid or the public defense systems, such as human rights issues involving criminal suspects, juveniles and crime victims, refugees, foreigners, people with disabilities, and the elderly, the JFBA initiated internally funded legal assistance projects, and its use is growing on a yearly basis. Programs aimed at reducing the number of locations with limited legal access also made the significant progress during this time. The bar associations have voluntarily provided the funds to open more than 100 public law offices and more than 300 legal consultation centers in nationwide locations. More than 50 JLSC staff lawyers and attorneys from public law offices worked together in remote areas, trying to eliminate the inequitable distribution of legal services in Japan.

One great example of this occurred in March 2011, immediately following the disasters in northeastern Japan this past year. In

collaboration with local governments, JLSC staff lawyers and attorneys from public law offices were deployed to regions damaged by the earthquake and nuclear accidents. They visited local shelters and temporary housing complexes and assisted in disseminating relevant information, legal consultation, and legislative recommendations.

Institutional access to the justice system has also broadened significantly during this time, though many issues are still left unresolved. The civil legal aid system was designed to lend the trial cost to users and have it returned afterwards, but a more comprehensive plan of financial assistance should be established for those facing extreme economic hardship. Similarly, civil legal aids are only available in cases that require court proceedings, so it is important to further expand the reach of its services, by applying civil legal aid assistance to different adjudication methods, such as ADR procedures and resolution methods using administrative means.

2. Expansion of the Scope of Lawyers' Activities

The JSRC recommendations also highlighted the importance of a lawyer's pro bono work and asked for a greater expansion of the scope of their public interest activities.

As of March 2012, the number of lawyers were approximately 32,000, and the size of the legal profession has exponentially increased, reaching nearly double the population of ten years ago. While this has had some adverse effects, namely employment difficulties for younger entrants into the profession, it did significantly expand the availability of legal resources and services in remote areas previously devoid of legal assistance, while at the same time allowing new and seasoned lawyers to better develop their own specialized fields of practice.

Many young lawyers are at the forefront of providing pro bono legal work, serving in areas such as human rights advocacy for consumers, the elderly, the disabled, workers, the poor, children, foreigners, women, the sick, or victims of crime. Others are dealing more broadly with environmental issues, disaster relief, and international human rights. Many are also beginning to participate in the profession as providers of legal support to these vulnerable individuals and groups. Yet, not only further expansion of the civil legal aid programs but closer collaboration between municipalities

and public institutions is still vital for gaining the financial support needed for the continuation of such services provided by these volunteers and support groups.

In 2011, 588 attorneys worked in private companies, and 86 lawyers worked for the local or national government as tenured civil servants – these numbers are gradually increasing. However, due to recent reforms aimed at promoting the sovereignty of regional governments and a concurrent decentralization of bureaucratic control of the central government, more lawyers are beginning to find positions within regional governments, and the plan to dispatch lawyers to earthquake stricken municipalities and governments is materializing very quickly.

The expanded role of lawyers has been supported through cooperation of bar associations and related private and public agencies. But the original expectation to extend their influence still fell short, especially with respect to their active involvement in private corporations, municipalities, the national government, public institutions, and international organizations. In addition to proposing new innovative legal curriculum in law schools and thinking up new strategies of financial support to young lawyers, the government must establish the necessary mechanisms and policies to promote the effective use of lawyers and to encourage them to further develop their own specialized fields of practice.

In other areas, the Reform Council suggested an interim measure to expand the role of the judicial scrivener or other legal specialists to take over the peripheral functions of attorneys until a significant increase of lawyers can be achieved. Today, having achieved this sizable legal profession, there should now be a new discussion aimed at delineating the appropriate boundaries of responsibility between judicial scriveners and lawyers regarding legal division of labor, as well as exploring new areas of collaboration between lawyers and other specialists in carrying out such services.

B. The Judicial System

1. Civil Justice Reforms

Despite the fact that there was a need for significant reform in the area of civil justice to ensure the civil rights of all citizens, the recommendations by the Reform Council has failed to offer significant reforms in these areas.

Over the past 10 years, the total number of civil cases at the district court have increased significantly from approximately 150,000 to 220,000, while at the summary courts, the number of cases doubled from 300,000 to 600,000. Likewise, civil cases that have been handled by attorneys also dramatically increased for the past 10 years from 150,000 to 270,000. Yet, the majority of increased civil cases involved claims of overpayment in consumer finance, and not in other categories of common civil cases. But with the strengthening of financial services regulation, especially with respect to laws governing money lending, the total number of civil litigation including overpayment cases is expected to decrease. Such decline in civil litigation also coincides with the sudden increase in the number of lawyers, creating a potential problem which has already been alluded to.

The recommendation by the Reform Council regarding trial proceedings in civil cases was successfully implemented and the overall length of the trial was significantly reduced. On the other hand, in order to ensure that the procedural rights of the parties are properly upheld in civil trials and to promote the important expansion of the evidence gathering procedures to revitalize the civil litigation process, the Reform Council suggested the introduction of an American-style discovery system. Strong oppositions from corporations against such a move, however, blocked this reform.

In the area of labor disputes, a labor referee system was introduced where a panel of one judge and two labor judges is asked to deliberate the dispute. The joint panel deliberated more than 3,000 cases annually and reached reasonable solutions within three days of proceedings and deliberations, garnering praise from both sides of the litigation. The success of the labor tribunal suggests that different systems of dispute resolution may be applied to various types of citizens' litigation. For instance, currently, legislative bills are being prepared to establish a class action lawsuit system for mass victims of small damages in consumer cases, and a so called "Nuclear ADR (*Genpatsu* ADR)" has already been introduced for nuclear disaster victims to claim damage compensation.

Today, more than ten years after the Reform Council issued its final recommendations, there has been renewed attention to the remaining council proposals that have yet to be implemented, such as lowering court filing fees, expansion of discovery procedures,

new dispute resolution systems, and access to expertise opinions in litigation involving intellectual property, medicine, and architecture. There should be reinvigorated discussions regarding these remaining reforms.

2. Improving the Checking Function Against Administrative Litigation

The number of administrative litigation cases brought to court in Japan is very low – only 1,400 cases were filed in 2000. The rate of rejection was about 20%, and courts ruled in favor of the plaintiff in 10% to 15% of all cases. And although the number of administrative litigation has somewhat increased to 2,100 in 2010, the numbers still remain low in comparison to other countries. Indeed, administrative litigation was a form of legal procedure that has been extremely difficult for citizens to use in settling disputes.

The Reform Council engaged in extended discussions to strengthen the checking function of administrative litigation by the judiciary and helped to pass the first revision of the Administrative Litigation Act. But any concrete reform still remains in its infant stages.

The first revision of the act contained a provision toward expanding one's legal standing to sue, mandating litigation injunctions and extending the statute of limitations for filing cases. There still remains many unresolved challenges; the second phase of the review for revisions was scheduled to commence in five years. And even as the Administrative Appeal Act and the freedom of information system have been previously reviewed, there has been little political interest for reform in the second phase of the planned reviews.

Likewise, there needs to be more serious discussion on expanding the legal standing for filing lawsuits, determining the mitigated requirements for mandatory litigation injunction and provisional relief, strengthening the review of administrative discretion, and establishing planned litigation and litigations involving court orders. Such reforms must target all appropriate administrative agencies to initiate significant changes in Japan's substantive administrative law.

3. Citizens' Legal Participation and Criminal Justice Reform

In the field of criminal justice, the establishment of both the

national public defender system and the *Saiban-in Seido* (a quasi-jury system) has been an important and notable achievement.

The creation of the national public defender or court-appointed council system signaled the end of a long era where criminal suspects were held in custody without any legal representation – replacing this previous arrangement is one where court-appointed lawyers now handle more than 70,000 cases annually. With the increased activities of lawyers during pre-indictment stages of the criminal process, we began to witness an increase in the rate of number of the court dismissals of detention requests by prosecutors, admission of quasi-complaints filed by defense attorneys, and nonindictment of suspects.

The *Saiban-in* panel is a system of adjudication composed of three professional and six lay judges. Participants must be over 20 years of age, can only serve in a single criminal case, and are selected on a random basis from the local community. The professional judges and citizen participants are required to be collaborative and make judgments on the case, including the sentence, collectively.

This new system made it essential to rely on the principle of oral presentation and direct examination of evidence in court, rather than on the records of investigative materials or statements of defendants extracted through interrogation. Furthermore, in order to carry out a full inquiry, the discovery procedure was introduced into the pretrial conference proceeding. As lay judges became dissatisfied with the presentation of recorded evidence of defendants, new efforts have been made to facilitate the possible visualization of the interrogation of criminal suspects. The introduction of the lay judge system began to play the role of a whole range of reforms in the administration of justice, which includes the investigation stage of the criminal justice process.

The *Saiban-in* system was put into force in May 2009; in 2010, 1,835 cases were processed by *Saiban-in* trials. About 96% of citizens who participated in the trials said that their experience was “good” or “very good.” Even among 93% of respondents who said that they “did not want to serve in the trial” agreed that their experience of the trial was “very good.”

Thanks to the enthusiastic support by professional judges and

strong assistance from of all three groups of the legal profession,¹ the *Saiban-in* system is off to a greater start than was initially anticipated.

4. The Reform of the Judge System and the Court's Strategies

The Reform Council also summarized a number of recommendations on institutional reform of the judge system, exploring ways of exercising and maintaining the court's authority and independence while ensuring a steady supply of high quality judges during a period when the judiciary was expected to expand.

These recommendations included measures to maintain a diversified and pluralized pool of individuals from which judges are selected, and changes to the process of appointing assistant judges, which included a new system whereby lawyers can be promoted to the rank of judges given input from the larger public. Other reforms included a measure to establish greater transparency in the process of judiciary appointment and evaluation, and increasing the resources to enhance the independence of judges in order to further ensure the transparency and objectivity of the system. These reforms have already incorporated the possible judicial "unification" of legal professionals, whereby judges are appointed from those qualified to practice law, including practicing attorneys.²

The bar associations must remain active in recommending a group of highly competent lawyers for judgeships, and the courts must review the nature of required duties and appropriate caseloads for judges. At this time, however, a considerable number of the judicial applicants had already been turned down. And while some judges who were appointed were able to establish an excellent reputation due to their demonstrated competence, many others failed due to large case loads and other administrative issues.

The two-year program for young assistant judges to work as practicing attorneys has had an excellent influence on the performance of their duties once they returned to their roles as

1. These three groups of Japan's legal professionals typically include: (1) practicing attorneys who are also members of the JFBA; (2) public prosecutors in the Ministry of Justice; and (3) judges and judicial assistants in the Secretariat of the Japanese Supreme Court.

2. This practice is called "hosoichigen." See Luke Nottage, *Reformist Conservatism and Failure of Imagination in Japanese Legal Education*, 2 ASIAN-PAC. L. & POL'Y J. 16 (2001).

judges. Many were able to gain unique perspectives of the litigants from a lawyer's points of view. But while the work experience program was required of all assistant judges and proved to be highly effective for training better judges, only a handful are actually able to participate. Hence, it is equally important to identify and secure the help of law offices that are willing to accept them into their programs.

The Judicial Nomination Advisory Committee – the members of which include many third-party groups – was finally installed to ensure the transparency of the process for the appointment of judges and to check against any unjust denial of qualified applicants. In addition, the new personnel evaluation system for judges was introduced to ensure objectivity and transparency in the personnel evaluation process. While this signals some progress, people's input and other outside information have yet to be incorporated into the appointment procedure. Likewise, a greater involvement of bar associations is required for better accountability of judge competency.

For the last 10 years, the number of judges reached 2,800 after approximately 600 new judges were appointed; such dramatic increase was unprecedented. However, the mandatory increase in the number of judges, as provided in the council recommendation, had only been applied to the first ten years. Thus, the rate of annual increase of judges for the future still remains uncertain.

There is a greater need to expand the human and material base of the judiciary to increase the number of both judges and judicial staff in order to enhance the quality of services at regional offices and make them into citizen-friendly courts.

C. Human Base for Supporting the Justice System

1. Reform of the Legal Profession Training Program

The Reform Council's recommendations also included proposals for a new legal education system capable of providing legal training that will train students in practical legal matters while simultaneously bridging the gap between legal theory and practice.

This new system was designed to shift the emphasis away from the an arduous process of "selection" of legal candidates to their "education" using a rigorous training regimen via continuing legal instruction in law schools, national bar exams, judicial training, and

systematic legal education programs. The specialist training in the academic environment have been understood as consistent with international standards, such as the creation of lawyer training centers, special training of professional judges, and active involvement in educational programs by legal professionals themselves.

More than 8,000 legal professionals grew up under the new system, a talented group of skilled professionals and college students from diverse backgrounds, all working in a variety of different subfields within the profession.

But today this new system has run into some difficulties; contrary to initial expectations, the number of judicial applicants and candidates to law schools has in fact plummeted.

It is believed that the cause of this rapid decline is correlated with a general diminution in applicants' aspiration within the profession due to the alarmingly low rate of successful bar exam passage, the difficulty in finding employment after certification, and economic burdens and hardship brought about by the training and qualification process. Some politicians have advocated for a return to the former rigid process of judicial examinations as legal training. The Japanese government, in response to these criticisms, has made it clear that it will establish a Legal Education Review Committee to discuss the problems and take action to address these issues this coming year.

Some of the outstanding criticisms are, for example, levied against the excessive number of law schools established under the new system and the widely observed disparity in educational quality among them. Many schools had originally claimed that 70% to 80% of their graduates could pass the bar exam, and while some schools did produce many successful candidates, many did not.

True, in general, many law schools have failed to properly understand and incorporate the original purpose and differentiated importance of the roles of the bar exam and legal education in general when designing their training programs. As a consequence, unnecessary burdens were placed on the students who were forced to skip courses in order to independently study and prepare for the sole purpose of passing the national bar exam.

In an effort to improve the quality of curriculum and programs at law schools based on the principle of legal education and training, there needs to be plans for institutional change for the future that

will confirm and reinforce the core role that law schools will continue to play in producing legal practitioners. It is also important to reduce the number of future legal applicants, as well as possibly consolidating some law schools, in order to enhance the quality of instructors who will cater to students who are from diverse backgrounds with different aspirations. It is also important to review the contents of legal education programs themselves and the subject matters of national bar exams, as well as properly delineating the role and responsibility of judicial training programs.

Furthermore, for the four years and eight months following graduation from law school, an economic support system must be put in place until the end of the legal training process that will lessen students' long-term financial burden. There must be measures that will also expand the scope of specialized legal fields after the acquisition of judicial certification, provide scholarships and other financial rewards during the legal training program, and create a legal framework that helps candidates retain their sole focus on training as lawyers without unneeded financial worries.

2. The Increase in Legal Professionals

The Reform Council expected that societal demands for legal services will gradually increase and the role of the legal profession will expand in the future. While there is, on the whole, fewer legal professionals in Japan than in other countries, the Reform Council urged that the professionals themselves nevertheless meet the public demand for legal services both in quality and quantity.

The necessity to increase the number of legal professionals had been discussed since the early 1990's, and 50,000 had been widely recognized as a favorable threshold by different interest groups. However, a wide range of opinions exists as to the pace at which to increase the number of legal professionals annually. In addition, there were a variety of different social initiatives that have tried to reimagine the kind of society and legal arrangement that would incorporate 50,000 additional legal professionals. Other agendas also included plans regarding how the judiciary and the legal professionals need to deal with concerns about the safety-net of the regional government and the governance and administration of the business community, as well as how a social and political transformation from an administration-centered nation to a nation governed by the rule of law can come about.

The Reform Council also recommended that it was important to consider an integration of the institutional foundation of human justice into the construction of a cohesive legal infrastructure, declaring that, after making necessary adjustments, a total of 3,000 legal applicants would pass the national bar exam by 2010.³ The council also pointed out that not only lawyers, but the number of judges, prosecutors, and staff would have to increase sharply.

The council's proposal to insert 3,000 additional legal professionals in 2010 had a positive impact on new legal areas and judicial reform activities, such as citizen participation in trials, the national public defender system, the expansion of civil legal aid programs, the confirmation of the public interest in the activities of lawyers, and the expansions of the new role of their activities.

However, although the number of individuals who passed national bar exams exceeded 2,000 in 2008, the number of actual successful legal candidates has more or less stagnated, making it impossible to achieve the original goal of 3,000 in 2010.

Factors that were responsible for the failure to reach the optimum number of successful candidates included, as previously noted, the significant disparity in the quality of legal training programs among law schools, a failure to achieve the desired expansion of the sphere of activity for new legal professionals, and the diminished adoption of lawyers into traditional legal organizations and institutions. Other factors included a stagnant number of civil lawsuits, and insufficient institutional infrastructure for citizens to utilize the judicial system fully.

Among the individuals who have completed their legal training last year, more than 400 still failed to be registered as full-fledged lawyers at the time of completion. But thanks to some collaborative efforts for employment support, many of these young lawyers were able to begin their duties as legal practitioners proper. Nevertheless, there remains a gradual increase in the number of unregistered lawyers upon completion of their legal training year

3. See Shihō seido kaikoku shingikai (司法制度改革審議会) [JSRC], Shihō seido kaikaku shingikai ikensho - 21seiki no nihon wo sasaeru shihō seido (司法制度改革審議会意見書-21世紀の日本を支える司法制度-) [Report of the JSRC - A Justice System for Japan in the 21st Century], Ch. III, Pt. 1 (1), June 12, 2001, available at <http://www.kantei.go.jp/jp/sihouseido/report/ikensyo/pdf-dex.html>. The official English translation, entitled *Recommendations of the Justice System Reform Council - For a Justice System to Support Japan in the 21st Century* is available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>.

after year, and many bar associations are beginning to insist that they can no longer accommodate any more new lawyers into their membership. In response to this, in March of this year, the JFBA made a proposal to reduce the number of successful applicants to 1,500.

Any significant increases in the number of legal professionals require a likewise delicate balance with the concurrent development of institutional infrastructures for legal training, societal demand for legal services, changes in the appointment of judges and public prosecutors, and citizens' access to the justice system.

D. Dependable Bearers of Judicial Reform

1. The Role of Lawyers and Bar Associations

In taking into account the public interest and social responsibility of lawyers, the Reform Council asked the bar associations to take on a more active role in developing and implementing the proper operational agendas for the successful deployment of council recommendations. The intention was for both lawyers and bar associations to take leadership roles in the judicial reform process.

As a result, many lawyers became intimately involved in the establishment of new legal institutions, including the *Saiban-in* system, the Japan Legal Support Center, and the new law schools and training programs of legal professionals. Additionally, in the anticipation of further implementation of proposals and recommendations, a number of bar associations are currently managing projects aimed to promote the protection of human rights, generate remedial strategies to significantly reduce regional locations with limited legal services, offer legal education and training, and facilitate citizens' easy access to the justice system. As a main driving force for judicial reform, lawyers and bar associations must continue to engage in activities that will alter the current legal landscape.

2. Responsibilities of the Government and the Role of Civil Society

The Reform Council pointed out that judicial reform was a major theme of the Japanese government in the 21st century and requested the government to commit special financial resources for building a system that will promote these plans. The council also agreed on basic principles that should be upheld by these reforms,

namely the preservation and empowerment of citizens' political freedom and rights.

Now, ten years after the council issued its recommendation, various initiatives and programs from the council's proposals are still facing difficulties, despite continued efforts that have been made to actualize many of its objectives. And, after some great momentum at the time of council debates and the political, social and cultural enthusiasm in the past, public interests and political will for further action seem to be fading away. Currently, there is little desire to engage in a collective effort to expand the role of the legal profession and the judiciary.

Needless to say, more active support and collaboration among various social and political groups is needed to complete the original objectives laid out by the Reform Council. In addition, the financial resources allocated for judicial reforms in the justice system are still limited. The Japanese government must embrace judicial reform as a top priority and commit strong fiscal measures to create the stable financial foundation and further promote significant reforms to the judiciary.

IV. Historical Significance of Judicial Reforms in the Last 20 Years and Challenges for the Future

In 2001, after a decade of discussion on the idea of a comprehensive judicial reform and a justice reform movement promulgated by the bar associations, the official proposals and recommendations of the Reform Council were finally made. These recommendations provided critical assessments of the state of the judiciary at the time, acknowledging its myriad problems as a government institution. It was from these recommendations that new initiatives and creative programs were birthed.

The council recommendations emphasized that an expanded role of the judiciary was essential to ensure that the basic principles of the Japanese Constitution, such as the idea of the "sovereignty of the people" and "respect for the individual's rights" will be properly upheld. The judiciary was also to position itself as an important pillar that will support the public good along with the Diet and the Cabinet. The council also affirmed that the people must participate in the administration of justice as autonomous subjects in a meaningful manner and that, as the provider of legal expertise and public interests, the legal profession must offer legal

services in response to specific living conditions of each individual, acting as so called "social doctors for the people."

Of course, the philosophy and ideals of the council recommendation included significant reforms in the role of the governing body and local governments and the function of social and economic activity. Given the nature of such massive reforms, what we have witnessed up to this point is only part of the early stages of Japan's entire reform movement.

On the surface, some key judicial reforms seemed to have completed because of the successful implementation of and changes to certain programs, such as the new legal education system, the Legal Support Center, and the *Saiban-in* system. But new criticisms have also emerged over a confusion regarding some issues such as the proper size of the legal profession and the quality and form that legal education and training should take on. These criticisms have led to a more negative assessment of the entire reform program and movement.

Likewise, challenges remain in the realm of civil justice, administrative litigation, as well as substantive considerations of the scope of lawyers' activities, and the transparency in the judge system. Prevailing economic and political problems have led to a regressive movement in these areas more recently. Despite the political pressure to reduce the judiciary budget due to recent deterioration of Japan's economic condition, the lawyers and bar associations were still expected to serve as active instruments of social change. But the harsh reality exists, in which all of us are finding it difficult to meet the public expectation and demand, for example, to increase the size of legal professionals.

Lawyers and bar associations are currently being forced into deciding whether they should take action to achieve the full realization of legal reform, or run a reversal course and go back to the drawing board once again. Still, despite some obvious roadblocks, lawyers and bar associations must continue to engage in day-to-day activities in the field. While there may be some temporal setbacks in the future, we will continue to make an honest effort to support the realization of judicial reforms as clearly articulated in the council recommendation as we possibly can.
